IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 15654 of 2004(L)

AGAINST THE ORDER DATED 11/7/03 IN IA.1122 & 1123/2000 IN AS.115/1999 of SUB COURT, VADAKARA

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PETITIONER:

K.RAVEENDRAN, RESIDING AT B CLASS
KUNIYIL, CHORODE AMSOM DESOM, VADAKARA TALUK.

BY ADV. SRI.SANTHARAM.P

RESPONDENTS:

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1. RAJAN, RESIDING AT B CLASS KUNIYIL,
CHORODE AMSOM DESOM, VADAKARA TALUK.

2. PUSHPA W/O. RAJAN, RESIDING AT B CLASS
KUNIYIL, CHORODE AMSOM DESOM, VADAKARA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.15654/04

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF PETITION FILED UNDER S.5 OF THE LIMITATION ACT NUMBERED AS IA.1122/00 DT.28.11.00

EXT.P2 – TRUE COPY OF PETITION I.A.1123/00 DT. DO.

EXT.P3 – TRUE COPY OF ORDER IN I.A.1122/00 IN A.S.115/99 DT.11.7.03.

EXT.P4 – TRUE COPY OF ORDER IN I.A.1123/00 IN DO. DATED DO.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.15654 OF 2004

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DATED THIS THE 14TH JUNE, 2007

J U D G M E N T

Exts.P3 and P4 orders dismissing an application for condonation of delay of 230 days caused in the matter of filing the application to restore the appeal and consequently dismissing the restoration application itself are under challenge in this proceedings under Article 227 of the Constitution initiated by the petitioner who was the plaintiff in the suit.

2. Even though the respondents have been served with notice, they have not entered appearance to resist the prayers in the Writ Petition.

3. Having regard to the submissions of Sri.P.Santharam, learned counsel for the petitioner, I am of the view that the learned Sub Judge was not justified in insisting that the advocate who himself had sworn to the affidavit in support of the application should have produced medical certificate also. The learned Sub Judge could have allowed the applications at least on terms.

4. In this case since the respondents have not entered appearance, I do not propose to award costs to them. However, considering the inconvenience which has been caused to the courts, I am inclined to grant relief to the petitioner only on terms. Accordingly

Exts.P3 and P4 will stand set aside on condition that the petitioner pays a sum of Rs.500/- by way of costs to the High Court Legal Services Committee within three weeks from today. If payment is not made, Exts.P3 and P4 will stand confirmed and the Writ Petition will stand dismissed. If payment is made and receipt produced before the court below, the court below will restore A.S.No.115 of 1999 and dispose of that appeal, after hearing both sides, in accordance with law.

The Writ Petition is disposed of as above.

tgl **(PIUS C.KURIAKOSE, JUDGE)**